

# **Defending Dual Status Youth in Juvenile Delinquency Proceedings**

**Children's Law Center**

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# Training Objectives

## Be able to:

- Identify dual status youth
- Effectively describe how complex trauma affects these dually-involved youth in any mitigation proceeding
- Provide more effective representation to dually-involved youth



# Identifying Dual Status Youth



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# Who are dual status youth?

- Three Categories:
  - Dually-identified youth
  - Dually-involved youth
  - Dually-adjudicated youth
- In some communities, as many as 2/3 of youth referred to juvenile court have had some level of involvement with the child welfare system

National Juvenile Defender Center Resource Brief: *Navigating the Dual Status Terrain: Tips for Juvenile Defenders*. December, 2015.



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# Dually-Identified Youth

- Currently involved in the juvenile justice system
- Have a history of involvement in the child welfare system
- Status can come from multiple referrals and not an open case
- Status can also arise from a child adopted out of foster care who begins acting out at an older age

National Juvenile Defender Center Resource Brief: *Navigating the Dual Status Terrain: Tips for Juvenile Defenders*. December, 2015.



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# Dually-Involved Youth

- Current involvement with the juvenile justice system
- Current involvement with the child welfare system
- Juveniles are often involved with the child welfare system before the juvenile justice system
- “Reverse flow”

National Juvenile Defender Center Resource Brief: *Navigating the Dual Status Terrain: Tips for Juvenile Defenders*. December, 2015.



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# Dually-Adjudicated Youth

- Adjudicated delinquent in the juvenile justice system
- Determined to be dependent in the child welfare system

National Juvenile Defender Center Resource Brief: *Navigating the Dual Status Terrain: Tips for Juvenile Defenders*. December, 2015.



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# Maltreated Youth and Delinquency

- Increased likelihood of arrest as a juvenile by 59%; as an adult by 28%
- As many as 42% of youth on probation are dual status youth

Widom & Maxfield, 2001; Bilchik & Nash, 2008



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# Maltreated Youth and Delinquency

- Delinquency rates are 47-55% greater than for youth without at least one substantiated maltreatment allegation
- 30% more likely to commit violent crimes

Ryan & Testa, 2005; Widom & Maxfried, 2001



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# Maltreated Youth and Delinquency

- Less likely to receive community-based sanctions
- More likely to receive dispositions for alternative placements to group homes or secure facilities, even after controlling for demographics and offense type

Ryan et al. 2007



# **Maltreatment, Adolescent Brain Development, and Complex Trauma**



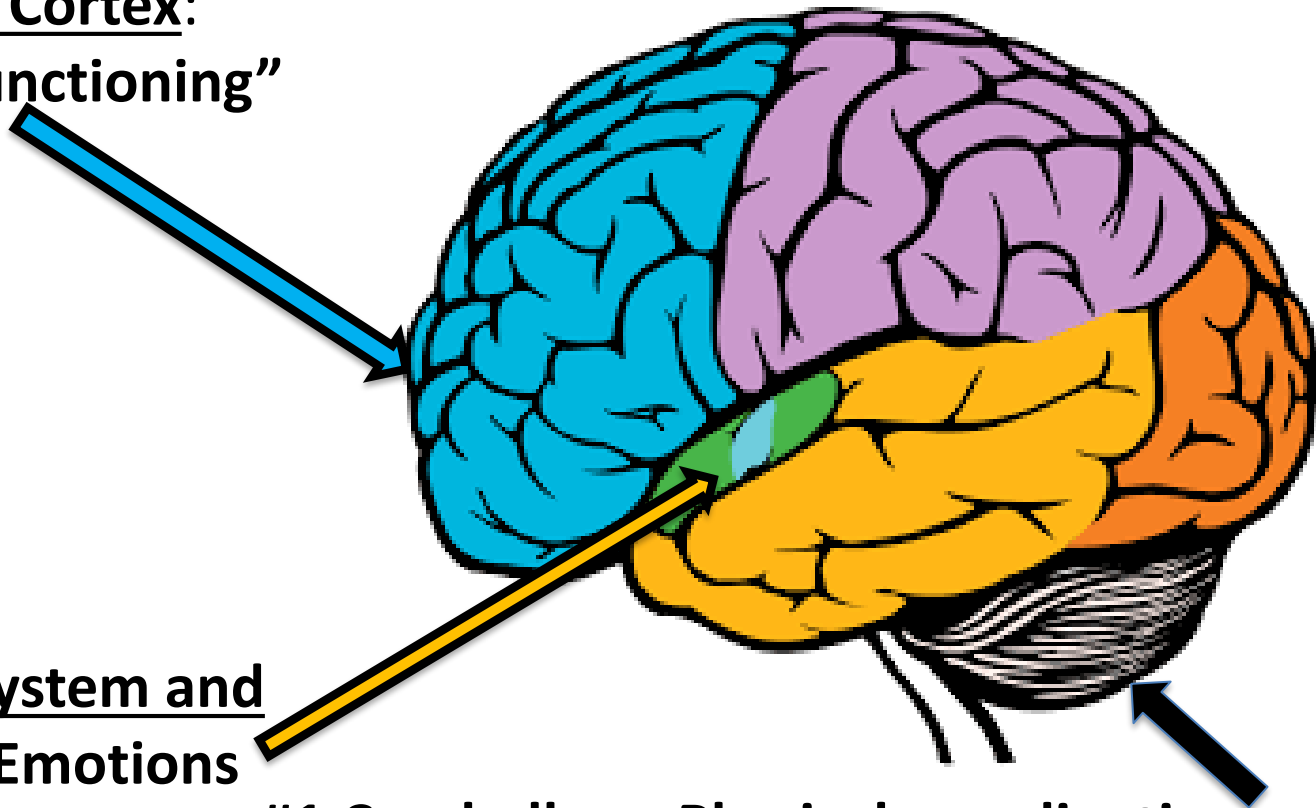
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# SLOW! Construction Ahead...

#3 Prefrontal Cortex:  
“Executive Functioning”

#2 Limbic System and  
Amygdala: Emotions

#1 Cerebellum: Physical coordination and  
sensory processing



Dr. Bryan Fox, *Adolescent Brain Development a Setup for Addiction?*, 2015



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# “Normal” Adolescent Behavior

Based on their stage of brain development, adolescents are **more likely** to:

- Display impulsive acts
- Misread social cues/interactions
- Get into all kinds of accidents
- Engage in risky or dangerous behavior

Academy of Child and Adolescent Psychiatry, [www.aacp.com](http://www.aacp.com)



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# “Normal” Adolescent Behavior

Based on their stage of brain development, adolescents are **less likely** to :

- Think before they act
- Pause to consider the consequences of their actions
- Change their dangerous or inappropriate behavior

Academy of Child and Adolescent Psychiatry, [www.aacp.com](http://www.aacp.com)



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# Child Maltreatment and Altered Brain Functioning

- Prefrontal cortex has less grey and white matter meaning fewer connections with organizing brain activity
- Hippocampus-learning area-is smaller than in other children
- The amygdala shows increased reactivity

Charles B. Nemeroff, *Paradise Lost: The Neurobiological and Clinical Consequences of Child Abuse and Neglect*, Neuron 89 (2016)



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# Definition of Trauma

- Person experienced, witnessed, or was confronted with an event(s) that involved actual or threatened death, or serious injury, or a threat to the integrity of self or others
- Victim or witness: abuse(s); neglect, medical trauma; traumatic loss; natural disasters; domestic, community, and school violence

The National Child Traumatic Stress Network, [www.nctsn.org](http://www.nctsn.org)



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# Functional Definition of Trauma

- Stress that occurs when children and adolescents are exposed to traumatic events or situations and this exposure overwhelms their ability to cope with what they have experienced

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# Complex Trauma

Exposure to multiple traumatic events, often of an invasive, interpersonal nature, and the wide-ranging, long-term impact of this exposure.

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# Events Leading to Complex Trauma

- Begins early in life
- Severe
- Pervasive
- Usually occurs in the context of a caregiver relationship and/or social environments

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# Complex Trauma and Impairment

- Biology
- Attachment
- Cognition and Learning
- Emotional Regulation
- Behavioral Regulation
- Self-Concept

The National Child Traumatic Stress Network, [www.nctsn.org](http://www.nctsn.org)



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# Complex Trauma and Impairment:

## Biology

- Can impair the development of the brain and nervous system
- May develop chronic or recurrent physical complaints
- As adults they are more at risk for chronic health issues such as smoking, substance use, obesity
- Body dysregulation

The National Child Traumatic Stress Network, [www.nctsn.org](http://www.nctsn.org)



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# Complex Trauma and Impairment: Attachment

- Difficulty developing a strong healthy attachment to a caregiver
- More vulnerable to stress
- Trouble controlling and expressing emotions; may react violently or inappropriately to situations
- May have problems in romantic relationships, in friendships, and with authority figures such as teachers or police office

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# Complex Trauma and Impairment:

## Cognition and Learning

- May have problems thinking clearly, reasoning, or problem solving
- All internal resources are focused on survival, more attuned to environment than task at hand
- Could have language and learning deficits
- May avoid academic challenges and give up more often when stressed; unable to build new skills

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# Complex Trauma and Impairment: Emotional Regulation

- Difficulty identifying, expressing, and managing emotions
- May have limited language for describing feelings
- May react often and powerfully to stimuli and have difficulty calming down when upset
- Can “tune out” to environmental threats, making them vulnerable to re-victimization

The National Child Traumatic Stress Network, [www.nctsn.org](http://www.nctsn.org)



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# Complex Trauma and Impairment: Behavioral Regulation

- Struggle with self-regulation (i.e., knowing how to calm down)
- Lack impulse control
- Behavior appears unpredictable, oppositional, volatile, and extreme
- Dissociation
- Higher risk of self-harm, unsafe sexual practices, excessive risk-taking, and illegal behaviors

The National Child Traumatic Stress Network, [www.nctsn.org](http://www.nctsn.org)



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# Complex Trauma and Impairment: Self-Concept

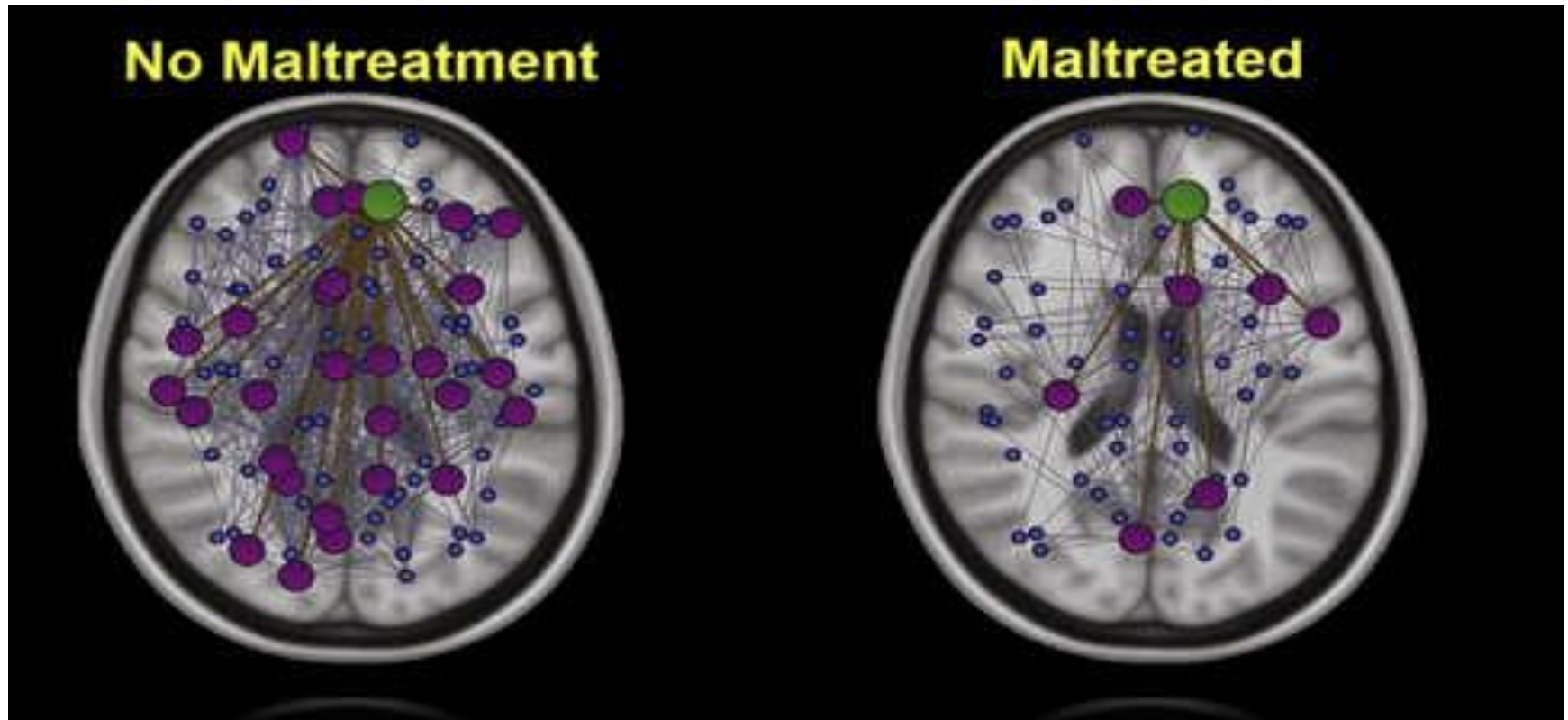
- Children learn their self-worth from the reactions of others, especially caregivers
- Abuse and neglect make a child feel worthless and despondent
- Shame, guilt, low self-esteem, and poor self-image are common in youth with complex trauma
- Feelings of hopeless and powerless to change circumstances

The National Child Traumatic Stress Network, [www.nctsn.org](http://www.nctsn.org)



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# Child Maltreatment and Altered Brain Functioning



Teicher, M.H.; Anderson, C.M.; Ohashi, K. et al. (2014)



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# Strategies for Defending Dual Status Youth



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*“Actually, I usually think of foster kids as being one step away from juvenile delinquents.” Attorney*

*“In my experience, foster care is just one of those preparatory steps before the kid commits a crime... If you get in foster care, the risk factors go up, and you’ll probably see the kid in the delinquency system.”*

Appeals Judge

Lisa Beth Pearl Greenfield, *Using Storytelling to Achieve a Better Sequel to Foster Care than Delinquency*, 37 N.Y.U. Rev. L. & Soc. Change 553, 2013



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# Investigate Child's Background

- Get child's DSS records
  - A. DSS/DJJ MOU
  - B. Michelle H. Settlement
- Talk with DSS caseworker
- See if there is a teacher or other member of the community willing to advocate for the child



# Communicating with the Child

- Sit at a right angle in a less formal manner
- Make sure the child's back is not to the door
- Pay attention, turn off your phone
- Ask open-ended questions
- Refrain from showing emotion
- Emphasize that the child is the boss– remember you are working for the child's stated interest
- Go at the child's pace

Meredith Linsky, *Best Practices for Interviewing Child Clients and Child Victims of Trauma* (2014)



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# Communicating with the Child

- Do not begin by discussing traumatic events immediately
- Try to begin by talking about neutral topics in order to build trust
- Give thoughtful compliments where appropriate
- Children who have suffered abuse may exhibit hyperactivity, anxiety, and impulsivity and are less likely to trust people

Meredith Linsky, *Best Practices for Interviewing Child Clients and Child Victims of Trauma* (2014)



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# Trauma-Informed Juvenile Defense

- Exposure to trauma is relevant to assess a juvenile's blame
- Juveniles are different
- Use mitigation not as an excuse but as a way to give context to the juvenile's life
- It is the advocate's job to discover and describe this mitigating information
- Trauma damages decision-making and judgment thereby decreasing their culpability

Miriam S. Gohara, *In Defense of the Injured: How Trauma-Informed Criminal Defense Can Reform Sentencing*, 45 Am. J. Crim L. 1 (2018)



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*Evidence about the defendant's background and character is relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background, or to emotional and mental problems, may be less culpable than defendants who have no such excuse*

*California v. Brown*, 479 U.S. 538, 545 (1987).  
Supreme Court Justice Sandra Day O'Connor



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# Create a Persuasive Story

- Narrative coherence
- Narrative correspondence
- Narrative fidelity
- Hero centered

Lisa Beth Pearl Greenfield, *Using Storytelling to Achieve a Better Sequel to Foster Care than Delinquency*, 37 N.Y.U. Rev. L. & Soc. Change 553, 2013



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# Narrative Coherence

- The most coherent story ends up being the most persuasive
- Tell a story that is internally consistent, meaning all parts of the story fit together
- Tell a story that is complete, meaning the sum of the parts creates a believable narrative

Lisa Beth Pearl Greenfield, *Using Storytelling to Achieve a Better Sequel to Foster Care than Delinquency*, 37 N.Y.U. Rev. L. & Soc. Change 553, 2013



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# Narrative Correspondence

- Story needs to correspond to what could happen or what usually happens
- Allows the listener to compare the story to their reality
- Attempt to draw analogies to “stock stories” familiar with the listener

Lisa Beth Pearl Greenfield, *Using Storytelling to Achieve a Better Sequel to Foster Care than Delinquency*, 37 N.Y.U. Rev. L. & Soc. Change 553, 2013



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# Narrative Fidelity

- This element centers on whether the story appears to fit with what the listener knows to be true in their life
- Emphasize child's character, voice, and viewpoint
- Goal is to win the heart and mind of the judicial audience
- Create sympathy and hope

Lisa Beth Pearl Greenfield, *Using Storytelling to Achieve a Better Sequel to Foster Care than Delinquency*, 37 N.Y.U. Rev. L. & Soc. Change 553, 2013



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# Hero-Centered

- Create a story where the juvenile is the hero
- Heroes are allowed to be imperfect
- They are able to grow, change, fail and succeed throughout the course of the story
- Heroes can have a wide range of emotions
- Focus on the child's reasons for behaving the way he or she did

Lisa Beth Pearl Greenfield, *Using Storytelling to Achieve a Better Sequel to Foster Care than Delinquency*, 37 N.Y.U. Rev. L. & Soc. Change 553, 2013



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*Accordingly, if we are to achieve justice for the neediest in our population, it is crucial that we hear their stories, even if those stories give us discomfort. If the foster child is to receive the justice that her state parent has promised her, then that parent-state must be open to hearing the child's narrative, and it must be open to hearing it as she voices it from her viewpoint.*

Lisa Beth Pearl Greenfield, *Using Storytelling to Achieve a Better Sequel to Foster Care than Delinquency*, 37 N.Y.U. Rev. L. & Soc. Change 553, 2013



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[http://www.aacap.org/aacap/fffprint/article\\_print.aspx?dn=The-Teen-Brain-Behavior-Problem-Solving-and-Decision-Making-095](http://www.aacap.org/aacap/fffprint/article_print.aspx?dn=The-Teen-Brain-Behavior-Problem-Solving-and-Decision-Making-095). (last visited September 18, 2018).





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